REMARKS

I. STATUS OF THE CLAIMS

Claims 1-7 and 11-17 are pending in the present application. In the Office Action mailed December 17, 2004, claims 1-7 and 11-17 were rejected.

By this Amendment, claims 1, 2, 6, and 7 are amended. Claims 11-17 are canceled. New claims 18-24 are added. No new matter is presented hereby.

II. OBJECTIONS TO THE CLAIMS

Claims 6 and 7 are objected to as having inconsistent claim language. Claims 6 and 7 are amended hereby. As such, it is submitted that this objection is obviated and should be withdrawn.

III. REJECTION OF CLAIMS UNDER 35 U.S.C. §102(b)

Claims 1-4, 6, 7, and 11-16 are rejected under 35 U.S.C. as being anticipated by U.S. Patent No. 5,585,161 to Difloe et al ("*Difloe*"). Claims 11-16 are canceled hereby. In view of the amendments to claim 1 and its associated dependent claims 2-4, 6, and 7, it is submitted that this rejection is obviated and should be withdrawn.

Amended claim 1 and its associated dependent claims 2-4, 6, and 7 are directed to a silt retention sheet comprising a non-woven web adapted to retain silt and to permit water to pass therethough, and at least one reinforcing element attached to said non-woven web at a predetermined location for receiving a fastener for attaching the silt retention sheet to a support member. Thus, the silt retention sheet of the present invention is selected to have properties that allow it to filter silt while allowing water to pass through. Further, the sheet includes at least one reinforcing element attached to the non-woven web. The reinforcing element strengthens the non-woven web at the point of attachment to a support member, such as a stake or post.

In contrast, *Difloe* is directed to a thermally bonded, high loft nonwoven batting material for use in cushions for furniture. The batting material is formed from a matrix of fibers thermally bonded to a low-melt bicomponent fiber. The material of *Difloe* includes embedments to reinforce the bonds between fibers within the matrix, thereby helping to maintain loft in the batting material over time (col. 3, line 58). According to *Difloe*:

> The present :nvention addresses the reduction in fiber loft frequently and commonly caused by the repeated flexing or compressing of thermal bonded fiber masses... Each of the various enhancement components of the present invention, [sic] contributes to stability and support in addition to reducing the inherent tendency for the fiber to collapse.

(col. 3, lines 62-64, col. 4, lines 40-42).

As recognized by the Court of Appeals for the Federal Circuit, the claimed invention must be viewec. not only for its structure and properties, but also for the problcm that it solves. (*In re Wright*, 848 F.2d 1216, 6 USPQ2d 1959 (Fed. Cir. 1988)). In sharp contrast to *Difloe*, Applicant's invention is not concerned with maintaining the loft of the material used to form the silt retention sheet, such as used at a construction site. Instead, Applicant seeks to provide a material that is capable of filtering silt from run-off water, and that is sufficiently robust to minimize or prevent tearing at points of attachment to stakes or other support members that anchor the silt retention material during use, for use at construction sites, along roads and streams and in other environments where the retention of silt and other debris from water flows is required, such as by federal, state or local environmental regulations. As such, the present invention includes at least one reinforcing element attached to the material. The reinforcing element(s) serve as a point of attachment to secure the material to a support member, for example, a stake or post. Thus, the reinforcing element does not intend to strengthen the bond between fibers within the non-woven web for the purpose of providing loft or expansion to a cushion material, as required by *Difloe*. Instead, the claimed invention provides strengthened points of attachment for securing the silt retention material to a stake or post to prevent collapse or failure of the material as silt builds up and is retained against the material while water is permitted tc pass therethrough for drainage.

Given that *Difloe* does not teach or suggest Applicant's invention as set forth in amended claim 1, and is in fact directed to a very different purpose and problem, *Difloe* is not sufficient to support a rejection under 35 U.S.C. §102(b) of amended claim 1 or its associated dependent claims 2-4, 6, and 7.

III. REJECTION OF CLAIMS UNDER 35 U.S.C. §103(a)

Claims 5 and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Difloe*. Claim 17 is canceled hereby. Claim 5 depends from claim 1. As discussed above, claim 1 is amended hereby. In view of the amendments to claim 1, it is believed that this rejection is obviated and should be withdrawn.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or combination of references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP §2142. Applicants submit that none of these criteria have been met.

As stated previously, *Difloe* does not mention, much less seek to solve, the problem addressed by the present invention. Thus, there is no motivation to modify the teachings of *Difloe* to arrive at the Applicant's invention as set forth in amended claim 1 or its associated dependent claim 5. For at least this reason, there is no expectation that the material of *Difloe* would successfully filter silt from water, or would be capable of being attached to a support member without tearing at the point of attachment. Further still, the combination of the teachings of *Difloe* with common knowledge as suggested by the Examiner would not teach all elements of Applicant's invention as recited in amended claim 1 or claim 5.

As such, it is submitted that *Difloe* is not sufficient to support a rejection of claim 5 under 35 U.S.C. §103(a). Therefore, it is respectfully requested that this rejection be withdrawn.

IV. NEW CLAIMS

New claims 18-24 are presented. It is believed that new claims 18-24 are patentable over the art of record, as no reference teaches or suggests the subject matter presented therein.

CONCLUSION

The foregoing is submitted as a full and complete response to the Office Action mailed December 17, 2004 and is believed to place all claims in the application in condition for allowance. Such action is courteously solicited.

If the Examiner believes that there are any issues that can be resolved by telephone conference, or if there are any informalities that may be addressed by an Examiner's amendment, please contact the undersigned at (404) 879-2437.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 09-0528.

Respectfully submitted,

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